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E-filed on August 27, 2012

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 DIMITRIZA TOROMANOVA,

16 Case No.: 2:12-cv-00328-GMN-CWH

17 Plaintiff,

18 vs.

19 WELL'S FARGO BANK, N.A. et al.,

20 Defendants.

21 **NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO STRIKE**
PLAINTIFF'S AMENDED COMPLAINT AND TO DISMISS CASE

22 COMES NOW Defendant National Default Servicing Corporation (hereinafter the
23 "Defendant" or "NDSC"), by and through its counsel of record, Gregory L. Wilde, Esq. of
24 Tiffany & Bosco, P.A., and moves the above-captioned Court, pursuant to Federal Rule of Civil
25 Procedure 12(f) and Local Rule IA 4-1, to strike Plaintiff Dimitriza Toromanova's (hereinafter
26 the "Plaintiff") Amended Complaint (hereinafter the "FAC", Doc. #22) and to dismiss this case.

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This Motion is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities, the attached documents, and any other additional information or oral argument as may be requested by the Court.

DATED this 27th day of August, 2012.

TIFFANY & BOSCO, P.A.

/s/ Kevin S. Soderstrom

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT

A. THE PLAINTIFF'S AMENDED COMPLAINT DOES NOT COMPLY WITH THE COURT'S ORDER ENTERED JUNE 25, 2012

This action began with the filing of a complaint (hereinafter the “Complaint”) by the Plaintiff on February 10, 2012. (Doc. #1-2). In the Complaint, the Plaintiff asserted causes of action for “Unlawful Taking of Property” (which the Court construed as a cause of action for wrongful foreclosure or statutorily defective foreclosure), “Trespass”, “Fraud”, and “Civil Racketeer Influenced and Corrupt Organizations Act (R.I.C.O.)”. (Doc. #1-2).

On June 25, 2012, the above-entitled Court entered an Order which stated the following:

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1 **“IT IS FURTHER ORDERED** that Defendant National Default Servicing
2 Corporation’s Joinder to Wells Fargo’s Motion to Dismiss (ECF No. 11) is
3 **GRANTED in part and DENIED in part**. Plaintiff’s First and Second Causes
4 of Action are **DISMISSED** with prejudice. Plaintiff is **GRANTED** leave to
5 amend her Third and Fourth Causes of Action against NDSC. Plaintiff shall
6 file the Amended Complaint by July 18, 2012. Failure to file an Amended
7 Complaint by that date will result in dismissal of this lawsuit.” (Emphasis in
8 original.) (Doc. #21).

9 Rather than filing an amended complaint consistent with the Court’s Order, the Plaintiff
10 instead filed an amended complaint which is clearly not consistent with the Court’s Order. The
11 FAC filed by the Plaintiff on July 18, 2012 asserts causes of action against NDSC for “Fraud in
12 the Inducement”, “Slander of Title”, “Quiet Title”, “Declaratory Relief”, and “Per Se Violation
13 of Unfair and Deceptive Trade Practices”.¹ (Doc. 22).

14 Additionally, the Court’s June 25, 2012 Order did not allow the Plaintiff to amend her
15 original Complaint to add any additional parties to this case. However, the FAC purports to add
16 three additional defendants to this action, namely World Savings Bank, FSB, National City
17 Mortgage, and Golden West Savings Association Service Co. (Doc. 22).

18 To the extent that the Plaintiff was dissatisfied with the parameters given by the Court
19 for filing an amended complaint, the Plaintiff ought to have sought leave from the Court with
20 different parameters. The Plaintiff neither sought nor obtained such leave.

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26 ¹ The FAC also asserts numerous claims against Wells Fargo Bank, N.A. and
27 Wachovia Mortgage, FSB, even though their motion to dismiss was granted by
28 the Court without leave to amend. (Doc. #21).

1 **B. THE PLAINTIFF'S FIRST AMENDED COMPLAINT SHOULD BE STRICKEN**
2 **PURSUANT TO FRCP 12(f)**

3 FRCP 12(f) states:

4 “(f) Motion to Strike. The court may strike from a pleading an insufficient defense
5 or any redundant, immaterial, impertinent, or scandalous matter. The court may
6 act:

7 (1) on its own; or
8 (2) on motion made by a party either before responding to the pleading or,
9 if a response is not allowed, within 21 days after being served with the
10 pleading.”

11 LR IA 4-1 states, in part:

12 “The court may, after notice and opportunity to be heard, impose any and all
13 appropriate sanctions on an attorney or party appearing *in pro se* who, without
14 just cause:

15 ...
16 (d) Fails to comply with any order of this court.”

17 The FAC filed by the Plaintiff on July 18, 2012 is clearly not in compliance with the
18 Court’s June 25, 2012 Order. Rather, the FAC filed by the Plaintiff is a rogue document and
19 should be stricken. The document constitutes redundant, immaterial, and impertinent pleading
20 which should be stricken pursuant to FRCP 12(f). Clearly, grounds exists for striking the FAC
21 pursuant to either FRCP 12(f) or LR IA 4-1.

22 Moreover, a court may strike an entire complaint if it is a “nullity” due to a failure to
23 obtain leave to file an amended complaint. *Morris v. Fresno Police Dept'*, 2010 WL 4977626, at
24 *3 (E.D.Cal. Dec. 2, 2010). Although the Plaintiff was given leave to file an amended
25 complaint, she was certainly not given leave to cast aside the parameters set by the Court and
26 file what she actually filed.

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1 As the deadline (which the Court strongly emphasized)² of July 18, 2012 has passed
2 with no compliant amended complaint having been filed, this case should be dismissed in its
3 entirety.
4

5 **II.**

6 **CONCLUSION**

7 Based on the foregoing, NDSC requests that its Motion to Strike Plaintiff's First
8 Amended Complaint and to Dismiss Case be granted in its entirety and that the instant case be
9 dismissed insofar as it pertains to NDSC, if not in its entirety.
10

11 DATED this 27th day of August, 2012.
12

13 **TIFFANY & BOSCO, P.A.**
14

15 /s/ Kevin S. Soderstrom
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24 National Default Servicing Corporation

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² In its June 25, 2012 Order, the words "by July 18, 2012" appear in bold
type and underlined. This, along with the statement that "Failure to file an
Amended Complaint by that date will result in dismissal of this lawsuit",
which also appears in bold type, strongly suggests that this was a strict
deadline for compliance.

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 2012, I electronically transmitted the above NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT AND TO DISMISS CASE to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

I further certify that on this 27th day of August, 2012, I placed a copy of the above NATIONAL DEFAULT SERVICING CORPORATION'S MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT AND TO DISMISS CASE into a sealed envelope and mailed it via regular mail, postage prepaid, addressed to:

Dimitriza Toromanova
2912 Hot Cider Avenue
Las Vegas, NV 89031
Plaintiff in Proper Person

/s/ Amy Grooms
An employee of Tiffany & Bosco, P.A.

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